

## **ADMINISTRATIVE PANEL DECISION**

Shenzhen Relx Technology Co., Ltd v. Ching Yin Tsang  
Case No. DAU2023-0005

### **1. The Parties**

The Complainant is Shenzhen Relx Technology Co., China, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Ching Yin Tsang, Ching Tsang, Australia.

### **2. The Domain Name and Registrar**

The disputed domain name <relxtech.com.au> (the “Domain Name”) is registered with Web Address Registration Pty Ltd.

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 13, 2023. On January 16, 2023, the Center transmitted by email to Web Address Registration Pty Ltd, a request for registrar verification in connection with the Domain Name. On January 18, 2023, Web Address Registration Pty Ltd transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact.

The Center verified that the Complaint satisfied the formal requirements of the .au Dispute Resolution Policy (the “Policy” or “auDRP”), the Rules for .au Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .au Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 19, 2023. In accordance with the Rules, paragraph 5(a), the due date for Response was February 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 9, 2023.

The Center appointed Nicholas Smith as the sole panelist in this matter on February 10, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainant is a Chinese company that is involved in the manufacture and distribution of e-vapor products under a trade mark consisting of the word “relx” in a distinctive, fancy script (the “RELX Mark”). The Complainant is also the owner of the domain names <relxaustralia.com> and <relxtech.com>, the latter of which is used as its primary website which received over 87,400 visitors in October 2022 alone.

The Complainant holds a number of registered trade marks in various jurisdictions (such as the European Union, the United States of America, and Hong Kong, China) for the RELX Mark including Australian trade mark registration number 1954762 registered on December 12, 2018, for goods in class 34.

The Domain Name was registered on August 6, 2019. The Domain Name is presently inactive but prior to the commencement of proceedings resolved to a website (“Respondent’s Website”) that prominently featured the distinctive RELX Mark and a black and white design similar to the Complainant’s official website. The Respondent’s Website contained the initial warning “RELX products contain nicotine and are unsuitable for minors”. The evidence before the panel is that the Respondent’s Website was in “Maintenance Mode” and hence inactive, save that the Respondent’s Website contained links to Facebook and Twitter pages that also reproduced the RELX Mark, referred to the Complainant’s e-vapour products and purported to be official websites of the Complainant (but were unconnected to the Complainant in any way).

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant makes the following contentions:

- (i) that the Domain Name is identical or confusingly similar to the Complainant’s RELX Mark;
- (ii) that the Respondent has no rights nor any legitimate interests in respect of the Domain Name; and
- (iii) that the Domain Name has been registered and is subsequently being used in bad faith.

The Complainant is the owner of the RELX Mark, having registered this mark in Australia since 2019. Disregarding the country code Top-Level Domain (“ccTLD”) “.com.au”, the Domain Name is confusingly similar to the RELX Mark since it wholly incorporates the RELX Mark along with the descriptive word “tech”.

There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Respondent is not commonly known as the Domain Name or a name corresponding to the Domain Name. The Respondent has no licence or right to use the Domain Name or the RELX Mark and has never been granted any permission by the Complainant for the registration of the Domain Name. The Domain Name is both inactive and being used to pass off as an official website of the Complainant by diverting customers to Facebook and Twitter pages that also pass off as official pages of the Complainant. As such the use of the Domain Name for the Respondent’s Website does not generate any rights or legitimate interests in the Domain Name.

The Domain Name was registered and is being used in bad faith. The Domain Name was registered and is being used with awareness of the Complainant and the RELX Mark and for the purpose of passing off as the Complainant and diverting customers from the Complainant to third party websites for commercial gain.

##### **B. Respondent**

The Respondent did not reply to the Complainant’s contentions.

## 6. Discussion and Findings

### A. Identical or Confusingly Similar

To prove this element the Complainant must have a name or trade or service mark rights and the Domain Name must be identical or confusingly similar to the Complainant's name, trade or service mark.

The Complainant is the owner of the RELX Mark, having registrations for the RELX Mark as a trade mark in Australia.

Disregarding the ccTLD ".com.au", the Domain Name incorporates the RELX Mark in its entirety with the addition of the term "tech". The added term "tech" does not prevent the RELX Mark from being recognisable in the Domain Name. In order to satisfy the test for confusing similarity, the relevant trademark or name would generally need to be recognisable as such within the domain name; see section 1.2 of the auDA Overview of Panel Views on Selected auDRP Questions First Edition ("auDRP Overview 1.0").

The Panel finds that the Domain Name is confusingly similar to the Complainant's RELX Mark. Consequently, the requirement of paragraph 4(a)(i) of the Policy is satisfied.

### B. Rights or Legitimate Interests

To succeed on this element, a complainant must make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. If such a *prima facie* case is made out, then the burden of production shifts to the respondent to demonstrate rights or legitimate interests in the domain name.

Paragraph 4(c) of the Policy enumerates several ways in which a respondent may demonstrate rights or legitimate interests in a domain name:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, is to be taken to demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to you of the subject matter of the dispute, your *bona fide* use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with an offering of goods or services (not being the offering of domain names that you have acquired for the purpose of selling, renting or otherwise transferring); or

(ii) you (as an individual, business, or other organisation) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the name, trademark or service mark at issue."

The Respondent is not affiliated with the Complainant in any way. It has not been authorized by the Complainant to register or use the Domain Name or to seek the registration of any domain name incorporating the RELX Mark or a mark similar to the RELX Mark. The Respondent does not argue that it is commonly known by the Domain Name or is making a legitimate noncommercial use of the Domain Name.

The Respondent's Website is a website that, through the use of the distinctive RELX Mark, similar styling to Complainant's official website and reference to the Complainant's e-vapor products, passes off as an official website of the Complainant, for the purpose of redirecting visitors to Facebook and Twitter pages that also display the RELX Mark and pass themselves off as official pages of the Complainant. None of the pages contain any disclaimer to suggest that the operator of the pages is anything other than the Complainant itself. The use of a Domain Name that directly corresponds to a trade mark for the purpose of creating a

website that passes off as an official website of the trade mark holder is not a *bona fide* offering of goods or services.

The Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has had an opportunity to rebut the presumption that it lacks rights or legitimate interests but has chosen not to do so. The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name under paragraph 4(a)(ii) of the Policy.

### **C. Registered or Subsequently Used in Bad Faith**

For the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to another person, for valuable consideration in excess of its documented out-of-pocket costs directly related to the Domain Name; or
- (ii) the Respondent has registered the Domain Name in order to prevent the owner of the name, trademark or service mark from reflecting the name or mark in a corresponding domain name; or
- (iii) the Respondent has registered the Domain Name primarily for the purpose of disrupting the business or activities of another person; or
- (iv) by using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's Website or location or of a product or service on the Respondent's Website or location; or
- (v) if any of the Respondent's representations or warranties as to eligibility or third party rights given on application or renewal are, or subsequently become, false or misleading in any manner.

The Panel notes that the Policy only requires that a complainant show that a respondent registered or subsequently used the disputed domain name in bad faith, however in the interest of completeness the Panel has considered both whether the Domain Name has been registered and used in bad faith.

The Panel finds that the Respondent was aware of the Complainant at the time the Domain Name was registered, as the Respondent's Website passes off as an official website of the Complainant by reproducing the RELX Mark and making reference to the Complainant's e-vapor products. The registration of the Domain Name in awareness of the Complainant and its rights in the RELX Mark and in the absence of rights or legitimate interests on the part of the Respondent amounts to registration in bad faith.

The Domain Name, which wholly incorporates the Complainant's RELX Mark, has been used by the Respondent to redirect visitors to the Respondent's Website, a website where the Respondent passes off as the Complainant and redirects visitors to other sites that also pass off as official websites of the Complainant, undoubtedly for some form of commercial gain, most likely to sell counterfeit versions of Complainant's e-vapor products. The Panel finds that by using the Domain Name in this manner the Respondent has, on the balance of probabilities, intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's Website or of a product or service on the Respondent's Website. The fact that the Domain Name is presently inactive does not prevent a finding of bad faith.

The Panel, while noting that the Policy only requires that a complainant shows that a respondent registered or used the domain name at issue in bad faith, finds that the Respondent has registered and has

subsequently used the Domain Name in bad faith under paragraph 4(a)(iii) of the Policy.

## **7. Decision**

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name, <relxtech.com.au> be transferred to the Complainant.

*/Nicholas Smith/*

**Nicholas Smith**

Sole Panelist

Date: February 14, 2023